at A's death one half to B. and if B die before A, then to B's children. B died after A, and both died before the testatrix. The court, following Fearne's rule, *supra,* repeated in *Norris* v. *Beyea* (1855) 13 N. Y. 273, and in later cases, held that the limitation to the children of B took effect, despite the non-performance of the condition. *U. S. Trust Co. of N. Y.* v. *Hogencamp* (1908) 191 N. Y. 281. But in *Norris* v. *Beyea, supra,* the condition had been literally performed; likewise, in *Downing* v. *Marshall* (1861) 23 N. Y. 366; *McLean* v. *Freeman* (1877) 70 N. Y. 81; *Wager* v. *Wager* (1884) 96 N. Y. 164; *Miller* v. *Winship* (1899) 161 N. Y. 71. On the other hand, in *Savage* v. *Burnham, supra,* where the testator devised the beneficial interest in a trust estate to his children, and if any of them should die under twenty-one, his share to be divided among the remaining children, and two of the sons died after attaining twenty-one, it was held in accordance with *Doo* v. *Brabant, supra,* that the gift over did not take effect. This decision seems to have been overlooked by the court in the principal case. *Williams* v. *Jones* (1901) 166 N. Y. 522, affords some apparent justification for the result reached. In that case a testatrix, evidently attempting to provide for all possible contingencies, made an ultimate disposition of the beneficial interest of a trust estate, if (1) A left surviving both wife and son, (2) only son, (3) neither of them, and in any case no issue of the son. The wife only was left. It was held, reversing the decision of the lower court, that, though none of the events provided for had occurred, the general scheme of the will showed a clear intention to make the disposition over dependent not upon the order of deaths of the *cestuis que trustent,* but upon their deaths and that of one of them without issue. Conceding this to be the correct construction, and the efforts of the testatrix to leave no contingency unprovided for points strongly to its soundness, the condition was in fact performed. In the principal case, however, there appears no evidence to show that an express condition was not intended to operate as such. The modern tendency of American courts to effectuate as fully as possible that which they consider the intention of the testator, in disregard of express terms of the will, *Young Women's Christian Home* v. *French* (1902) 187 U. S. 401, may be justified in *William* v. *Jones, supra,* but the principal case illustrates a dangerous tendency to substitute conjecture for express intention.

DETERMINATION OF RIGHTS IN CHURCH PROPERTY.—Lord Eldon's view, apparently founded upon religious conditions peculiar to England, that civil courts must decide for themselves all questions of creed, *Attorney-General* v. *Pearson* (1817) 3 Meri. 353, has never received judicial sanction in this country. *Watson* v. *Jones* (U. S. 1871) 13 Wall. 679, 733; see 6 COLUMBIA LAW REVIEW 137. The policy of American courts has confined the determination of ecclesiastical questions as far as possible to church tribunals. *Chase* v. *Cheney* (1871) 58 Ill. 509. Logical adherence to this policy would exclude any consideration of such questions except where civil rights are involved. *White Lick etc.* v. *White Lick etc.* (1883) 89 Ind. 136. Civil courts may not, however, avoid questions of creed, if necessary for the determination of property rights. But in no case will courts

investigate the abstract truth or falsity of a doctrine, always treating questions of creed as questions of fact. *East Norway etc. Church* v. *Halvorson* (1890) 42 Minn. 503. The decision thereon of a competent church tribunal is accepted as final. *Watson* v. *Jones, supra.* On the other hand, the regularity of the proceedings of a church body is a proper subject of inquiry *Bouldin* v. *Alexander* (U. S. 1872) 15 Wall. 131.

In determining controversies over church property in each particular case, fundamental principles require the effectuation of the intention of the donor and the enforcement of an ascertained trust. *Happy* v. *Morton* (1864) 33 Ill. 398. Whether any specific limitation of creed should be implied from surrounding circumstances or original user where property is deeded to the church by name only, is a matter of dispute. Some courts strive to imply limitations, *Hale* v. *Everett* (1868) 53 N. H. 9, but, it is submitted, sounder policy, *Watson* v. *Jones, supra,* demands the avoidance of implications unless circumstances attending the gift clearly manifest the intention of the donor or purchasers to restrict the use. *Miller* v. *Gabel* (N. Y. 1845) 2 Denio 492; *Wilson* v. *Livingston* (1894) 99 Mich. 594. If, however, a limitation is found, express or implied, a material change of creed terminates the trust; the property reverts to the donor, *Venable* v. *Coffman* (1867) 2 W. Va. 310, 320; cf. 8 COLUMBIA LAW REVIEW 222, unless the grant was accompanied by consideration. In such a case it does not, upon Coke's theory, revert to the vendor, *McRoberts* v. *Moudy* (1885) 19 Mo. App. 26, but escheats to the state for similar charitable purposes. Cf. *Mormon Church* v. *United States* (1890) 136 U. S. 1. In either case, in the event of a schism, those adhering to the old creed, theoretically, should retain the use regardless of their numbers. Such is the law by the weight of authority. *Hale* v. *Everett, supra; Roshi's Appeal* (1871) 69 Pa. St. 462; but see *Stebbins* v. *Jennings* (Mass. 1830) 10 Pick. 172, 183. Whether this change of creed be local or accompany a change in the superior affiliated body, the result is manifestly the same. *App* v. *Lutheran Congreg.* (1847) 6 Pa. St. 201. An anomalous result, defeating the intention of the donor, might be reached, however, should the superior body adjudge a strictly material change immaterial. It would seem that the merits could not be inquired into unless fraud were shown. Of course, if the use of the property be subject to no limitation, express or implied, the solution is simple; the majority, as in other voluntary associations, have absolute control within the rules and regulations of the church. *Sutter* v. *First Ref. Church* (1862) 42 Pa. St. 503. Even if there be a limited trust the solution is the same where the disputed change in creed is immaterial. *Trustees etc.* v. *St. Mary's Church* (1864) 48 Pa. St. 20. Curiously enough, however, some courts, in such cases, have ordered the property to be sold and the proceeds divided *pro rata. Ferraria* v. *Vasconcellos* (1863) 31 Ill. 25. Under statutes of incorporation limitations of creed have been almost entirely disregarded. *Robertson* v. *Bullions* (1854) 11 N. Y. 243; *Parish of Bellport* v. *Tooker* (N. Y. 1859) 29 Barb. 256. However courts may desire to evade religious controversies, arbitrary disregard of the donor's express intention is inexcusable. The law has fortunately been modified in New York by a later statute. *First Presbyt. Church* v. *Bowden* (N. Y. 1880) 10 Abb. N. C. 1.

In a recent case, *Clark* v. *Brown* (Tex. 1908) 108 S. W. 421, consequences following the merger of the Cumberland Presbyterian Church with the general Presbyterian Church required a discussion of the principles involved in the determination of rights in church property. The refusal of a part of the superior body to concur in the merger resulted in a schism in a local church, whose property was held in trust for the use of the Cumberland Church. The court decreed the use thereof to the minority, which adhered to the old creed. The grounds of the decision were the lack of constitutional authority in the superior body to merge, and a material change in creed. The opposite result was reached in *Mack* v. *Kime* (Ga. 1907) 58 S. E. 184. The court, in the latter case, construed the authority of the superior body differently, and considered the act of merger an implied adjudication that no material change was made in creed. Assuming the premise, the decision was sound; but the assumption seems unfounded. In both cases the property was originally purchased and deeded to trustees for the use of the church by name. The court, in the principal case, implied a strict limitation of creed. The Georgia court, more liberally construing the purposes of the trust, reached in this respect a result more practical and, it would seem, more progressive. As a matter of policy, courts should be slow to restrict the freedom of a church to change its religious views at the expense of the loss of its property, unless the trust be clearly limited.

AMENDMENT OF BY-LAWS IN MUTUAL BENEFIT ASSOCIATIONS.—The contract between a mutual benefit society and a member is one of insurance. *Commonwealth* v. *Wetherbee* (1870) 105 Mass. 149, but differs from the ordinary insurance policy in that the by-laws form a part thereof. *Barbot* v. *The Mutual Association* (1897) 100 Ga. 681. The member is both insurer and insured. *Bragaw* v. *Supreme Lodge* (1901) 128 N. C. 354. How far under the power of amendment, usually reserved in the by-laws, the society may alter the member's contract is a subject of conflicting opinion. The injustice of permitting the society to amend without limitation has led to the adoption of various rules, many of doubtful validity. The denial of power to destroy the member's contract is clearly justifiable, for, obviously, it was not his intention to confer that privilege. *Weiler* v. *Equitable Aid Union* (N. Y. 1895) 92 Hun 280. Some courts hold that the contract cannot be altered unless the member has expressly agreed to comply with future by-laws. *Peterson* v. *Gibson* (1901) 191 Ill. 365. To distinguish between an express and an implied agreement appears illogical. 4 COLUMBIA LAW REVIEW 229. The doctrine is sometimes advanced that the face value of a member's certificate cannot be reduced, on the ground that he agreed only to a change in the by-laws and not to the avoidance of an express obligation independent of the by-laws. *Hale* v. *Equitable Aid Union* (1895) 168 Pa. St. 377; *Newhall* v. *American Legion of Honor* (1902) 181 Mass. 111. The power to amend, however, includes the power to enact new by-laws. If the new by-law affects an express term of the certificate it should not, for that reason alone, be invalid. The argument that he must have expected to receive the express amount of his certificate would apply equally